

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	ID No. 1905009245
)	In and for Kent County
v.)	
)	RK19-05-0366-01 PFBPP PABPP (F)
JEROME WILLIAMS,)	RK19-05-0370-01 Drug Dealing (F)
)	
Defendant.)	

COMMISSIONER'S REPORT AND RECOMMENDATION

**Upon Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

Gregory R. Babowal, Esquire, Deputy Attorney General, Department of Justice, for
the State of Delaware.

Jerome Williams, *Pro se*.

FREUD, Commissioner
December 18, 2020

The defendant, Jerome Williams ("Williams"), pled guilty on November 27, 2019 to one count of Possession of Ammunition by a Person Prohibited ("PABPP"), 11 *Del. C.* § 1448 and one count of Drug Dealing, Tramadol 16 *Del. C.* § 4754. He also faced one count of Possession of a Firearm by a Person Prohibited, two additional counts of PABPP, one additional count of Drug Dealing MDMA, one count of Possession of Alprazolam, one count of possession of Heroin, one count of Possession of MDMA and one count of Possession of Drug Paraphernalia. *Nolle*

prosequis were entered on the additional counts by the State in exchange for Williams's plea. The State and Defense recommended a sentence of sixteen years incarceration, suspended after serving two and a half years followed by one year of probation. The Court agreed with the sentence recommendation and sentenced Williams accordingly. Had Williams gone to trial and been found guilty as charged he faced substantially more time in prison. Williams did not appeal his conviction or sentence to the State Supreme Court. Instead, Williams filed a Motion for Postconviction Relief and Motion for Modification of Sentence both on December 20, 2019. The Court denied the Motion for Modification of Sentence on January 13, 2020.¹ In his postconviction motion filed pursuant to Superior Court Criminal Rule 61, Williams alleges ineffective assistance of counsel.

FACTS

According to the Affidavit of Probable Cause the following *facts* are noted:

The Dover Police Department began an investigation of Williams for drug dealing in April 2019. The police obtained a search warrant for Williams's home and executed the warrant on May 14, 2019. Williams was located in an upstairs bedroom along with Tamera Williams. The officers also recovered a Remington rifle and 27 rounds of 22 caliber ammunition in the same bedroom Williams was found in. Additional caliber ammunition was also found along with 21 doses of Tramadol, 1 dose of Alprazolam, Heroin and MDMA (Ecstasy), a digital scale and \$548 in U.S. currency, all in Williams's bedroom. Williams had a prior conviction for Robbery in the Second Degree and Reckless Endangering in the First Degree making him a person prohibited from

¹ *State v. Williams*, Super. Ct. ID No. 1905009245, DI 16.

having possession of firearms or ammunition.²

WILLIAMS'S CONTENTIONS

In his motion, Williams raises the following grounds for relief:

Ground one: Wasn't trying to hear what I had to say. During my office visits try to explain but he refused to listen - 11 Del. C. 4217.

Ground two: Showed evidence the day before. When office visit was made he clearly stated - it didn't matter they were going to find you guilty anyway.

Ground three: Ask for a new lawyer - 11 Del. C 4217. The third day of my visit went to the main Office of the Public Defender which 38 The Green – what was said, what you have is what you get.

These grounds constitute Williams's allegations in total as he did not file a memorandum of law in support of his motion.

DISCUSSION

Under Delaware law, the Court must first determine whether Williams has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of the postconviction relief claims.³ Under Rule 61, postconviction claims for relief must be brought within one year of the conviction

² *State v. Williams*, ID No. 1905009245, DI 1.

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

becoming final.⁴ Williams's motion was filed in a timely fashion, thus the bar of Rule 61(i)(1) does not apply to the motion. As this is Williams's initial motion for postconviction relief, the bar of Rule 61(i)(2), which prevents consideration of any claim not previously asserted in a postconviction motion, does not apply either.

Grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred unless the movant demonstrates: (1) cause for relief from the procedural default; and (2) prejudice from a violation of the movant's rights.⁵ The bars to relief are inapplicable to a jurisdictional challenge or "to a claim that satisfies the pleading requirements of subparagraph (2)(i) or (2)(ii) of subdivision (d) of Rule 61."⁶ To meet the requirements of Rule 61(d)(2) a defendant must plead with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted⁷ or that he pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United State or Delaware Supreme courts, applies to the defendant's case rendering the conviction invalid.⁸ Williams's motion pleads neither requirement of Rule 61(d)(2).

None of Williams's claims were raised at the plea, sentencing or on direct appeal. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. To some extent each of Williams's claims are based on

⁴ Super. Ct. Crim. R. 61(i)(1).

⁵ Super. Ct. Crim. R. 61(i)(3).

⁶ Super. Ct. Crim. R. 61(i)(5).

⁷ Super. Ct. Crim. R. 61(d)(2)(i).

⁸ Super. Ct. Crim. R. 61(d)(2)(ii).

ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised them earlier.

At this point, Rule 61(i)(3) does not bar relief as to Williams's grounds for relief provided he demonstrates that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claim of ineffective assistance of counsel, Williams must meet the two-prong test of *Strickland v. Washington*.⁹ In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.¹⁰ The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.¹¹ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.¹² When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong

⁹ 466 U.S. 668 (1984).

¹⁰ *Id.* at 687.

¹¹ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

¹² See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).

presumption that counsel's conduct was professionally reasonable.¹³ This standard is highly demanding.¹⁴ *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”¹⁵

Following a complete review of the record in this matter, it is abundantly clear that Williams has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find trial counsel’s affidavit, in conjunction with the record, more credible than Williams’s self-serving claims that his counsel’s representation was ineffective. Williams’s counsel denies the allegations.

Williams was facing the possibility of substantial time in prison had he been convicted on all the charges. In fact, Williams’s counsel was successful in negotiating with the State to lower the sentence recommendation from five to only two and one half years incarceration. The sentence and plea were very reasonable under all the circumstances, especially in light of the evidence against him. Prior to the entry of the plea, Williams and his attorney discussed the case. The plea bargain was clearly advantageous to Williams. Counsel’s representation was certainly well within the range required by *Strickland*. Additionally, when Williams entered his guilty plea, he stated he was satisfied with defense counsel’s performance. He also admitted his guilt.¹⁶ He is bound by his statement unless he presents clear and

¹³ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

¹⁴ *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

¹⁵ *Strickland*, 466 U.S. at 689.

¹⁶ *State v. Williams*, Del. Super., I.D. No. 1905009245, (Nov. 27, 2019), Tr. at 6.

convincing evidence to the contrary.¹⁷ Consequently, Williams has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Williams was somehow deficient, Williams must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.¹⁸ In an attempt to show prejudice, Williams simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice, particularly in light of the evidence against him. Therefore, I find Williams's grounds for relief meritless.

To the extent that Williams alleges his plea was involuntary, the record contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.¹⁹ At the guilty-plea hearing, the Court asked Williams whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Williams if he understood he would waive his constitutional rights if he pled guilty including the right to suppress evidence; if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form ("Guilty Plea Form"); and whether he gave truthful answers to all the

¹⁷ *Mapp v. State*, 1994 WL 91264, at *2 (Del.Supr.)(citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

¹⁸ *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

¹⁹ *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

questions on the form. The Court asked Williams if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Williams if he was entering into the plea because he was guilty of the charge. The Court also asked Williams if he was satisfied with this counsel's representation. Williams answered each of these questions affirmatively.²⁰

Furthermore, prior to entering his guilty plea, Williams signed a Guilty Plea Form and Plea Agreement in his own handwriting. Williams's signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Williams is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.²¹ I confidently find that Williams entered his guilty plea knowingly and voluntarily and that Williams's grounds for relief are completely meritless.

CONCLUSION

I find that Williams's counsel represented him in a competent and effective manner and that Williams has failed to demonstrate any prejudice stemming from the representation. I also find that Williams's guilty plea was entered knowingly and voluntarily. I recommend that the Court **deny** Williams's motion for postconviction relief as procedurally barred and completely meritless pursuant to Superior Court Criminal Rule 61(i)(3) and (4).

/s/ Andrea M. Freud

Commissioner

AMF/dsc

²⁰ *State v. Williams*, Del. Super., ID No. 1905009245 (Nov. 27, 2019) Tr. at 4-9.

²¹ *Sommerville* 703 A.2d at 632.